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D.B. CIVIL SPECIAL APPEAL NO.820/2006.
[SHAILENDRA SINGH VS. UNIVERSITY OF BIKANER & ORS.]
DATED : 07.03.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.R.K.Singhal for the appellant
Mr.D.D.Chittlangia for the respondent.

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Heard learned counsel for the parties.

The appeal is directed against the order passed by the learned Single Judge dated 14.09.2006. The writ petition has been dismissed while vacating the interim order without going into merits of the writ petition. The interim relief related to declaration of the result of Second Year LLB Examination which the petitioner was allowed to under-take by way of interim relief in the writ petition filed by the petitioner who was once declared passed in LLB Ist Year Examination but later on the said result was declared failed. By then he had already completed most of IInd Year Curricularm.

This takes us to the facts of the present case which are somewhat unconventional so are the rules of examination under the Examination Ordinance.

The petitioner appellant has appeared in LLB Ist Year Examination held in the Year 2005 by the University of Bikaner. As per the result declared he was entitled to take supplementary examinations as he has not been able to make aggregate of 48% marks.

Ordinance 256 C provides that a candidate who fails at the LLB Ist Year/IInd Year or IIIrd Year Examination but has obtained not less than 48% marks in aggregate and individually 36% marks at least in five papers including the written papers namely 3.7, 3.8 and 3.9 of practical papers in LLB Ist Year of that examination shall be permitted to reappear in not more than four theory papers of his choice at the following supplementary examination.

Thus it was left to the choice of the candidate to take supplementary examination in any one or more subjects of his choice subject to maximum of four papers and it was not for the University to declare in which paper the candidate had to take supplementary examination.

In terms of the aforesaid rule the petitioner appellant had applied for taking supplementary examinations in three papers namely Law of Torts and Constitutional Protection in

which he had secured 35 marks, Environmental Law in which he had secured 41 marks and Family Law-II [Mohdn. Law] in which he had secured 43 marks in the main examination.

In all the three papers the petitioner had also applied for revaluation of his marks in terms of Ordinance 157 and 157 A.

Before result of revaluation could be declared the supplementary examination results were declared in which the petitioner secured 51 marks in Law of Torts and Constitutional Protection as against 35 marks obtained originally and in Environmental Law the petitioner obtained 44 marks as against 41 in main examination but in Family Law II [Mohdn. Law] he could secure only 29 marks, as against 43 marks obtained at main examination.

After the declaration of the result of Supplementary Examination the result of the revaluation was declared. According to which the petitioner bettered his result in all the three papers. According to the revaluation marksheet the petitioner obtained 40 marks in Law of Torts and Constitutional Protection against 35 marks secured originally and in Environmental Law he secured 46 against original 41 and in Family Law-II [Mohdn. Law] he secured 47 marks against

originally 43 and the two results were before the petitioner and he opted to retain the result of supplementary examination in the paper of Law of Torts and Constitutional Protection and Environmental Law and chose to retain marks obtained in revaluation in Family Law -II [Mohdn. Law] which were higher of the two.

Taking into consideration these three marks two from supplementary and one from revaluation as aforesaid the petitioner was declared passed by grace vide marksheet issued on 27.01.2006 [Annexure 5] and on that premise he became entitled to take LLB 2nd Year Examination.

However, thereafter the petitioner was informed vide communication dated 11.03.2006 that once the applicant had taken supplementary examination, result of his supplementary examination cannot be substituted by the result of revaluation . Therefore, reverting back to the result of supplementary examination only in which he has secured only 29 marks in Family Law -II [Mohdn. Law] much less than the required minimum marks in the papers he was declared failed in LLB Ist Year.

This led to filing of the writ petition. The petitioner along with writ petition has annexed his representation dated 21.03.2006 pointing out that in terms of the Ordinance 156 and 192 [3] he is entitled to retain better result of the two examinations namely supplementary or the revaluation. Therefore, he was entitled to retain the result of Family Law-II [Mohdn. Law] in terms of the revaluation as against the result of Family Law-II [Mohdn. Law] in supplementary.

However, when this representation was not responded to, the writ petition was filed. Specific ground was also raised in the writ petition on the anvil of Ordinance 157 A that as per Sub Clause 3 [2] of the Ordinance 157 A if the result of the revaluation is declared after appearance in supplementary of the main examination the better performance of the candidate amongst the supplementary examination and on revaluation is required to be taken into consideration. Declaration of the result of the petitioner as per mark sheet dated 30.12.2005 r.w. Mark sheet dated 21.07.2006 was correctly declared in terms of aforesaid Ordinance 157 A by taking into account the marks obtained by the petitioner at supplementary examination held for Law of Torts and Constitutional Protection and Environmental Law and marks obtained by the petitioner in Family Law-II [Mohdn. Law] as a result of revaluation.

Considering these aspects, the petitioner was allowed to take second Year LLB Examination by way of interim relief. Application for declaration of the result was rejected by the learned Single Judge. No reasons for vacating the interim relief have been brought on record. This writ petition was dismissed simultaneously without passing a speaking order.

In these circumstances, when the matter came in appeal the Division Bench while admitting the appeal directed for the declaration of result of the appellant for LLB 2nd Year Examination 2006.

We have already noticed above the relevant provisions of the Ordinance and to focus on the controversy it is apposite to reproduce the Sub Clause [3] of Para 9 of the Ordinance 157 A which reads as under :-

> "The candidate who appears at the supplementary of main examination and also applies for revaluation in that/those paper[s] and if the result of revaluation is declared after appearance at the supplementary of main examination, in such a case the better performance may be taken into account if the candidate so wishes."

In our opinion, the aforesaid provision leaves no room of doubt that the appellant petitioner was entitled to retain the

better of the two performance amongst the revaluated marks obtained by him and the marks obtained by him in supplementary of main examination at his option. This appears to be a corollary of the provisions relating to the supplementary examination which leaves it at the option of the candidate to appear in one or more subjects not exceeding four in number at supplementary examination on fulfillment of the condition under which the candidate is allowed to take supplementary examination. In case the applicant gets better performance on revaluation after taking of the supplementary examination obviously ordinarily the revaluation marks stand substituted of the original marks and the choice of taking supplementary examination which depend upon marks obtained at main examination also gets modulated with the increase in marks on account of the revaluation. In other words, once the original marks stand replaced with the marks awarded on revaluation, then choice to take supplementary examination too gets modulated. To illustrate if as a result of revaluation the candidate does not fall in the category of those who can take supplementary examination, he gets a pass marksheet of main examination and cannot be declared failed on the basis of supplementary examination. In fact, in such event supplementary examination became infructuous.

In consonance with this, the ultimate choice of taking supplementary examination and choice of papers in which the candidate seeks permission to take supplementary examination cannot be divorced from the ultimate result on revaluation of marks in papers applied for.

In fact, the two provisions read together make the scheme of the supplementary examination and the scheme of revaluation complementary to each other and makes the scheme complete.

We, therefore, have no doubt in our mind that under the scheme of the examinations conducted by the Bikaner University, which includes the provisions of revaluation of the marks obtained at main examination as well as permits the candidate to take supplementary examination in subjects of his choice in the LLB Papers in the supplementary examination allows better of the two results to be retained by the candidate in the subject. The only contention of the learned counsel for the University is that the candidate has choice either to retail all the marks in revaluation only or all the marks in the supplementary but not the better marks in individual papers. This contention does not commend itself. The scheme of revaluation as well as taking supplementary

examination of main examination relates to individual paper only and not to whole examination. Hence the Rule 157 A also operates in respect of subjects in which revaluation is applied for and subjects in which the candidate has chosen to take supplementary examination. In such event the marks obtained in the first instance gets substituted by better of the subsequent marks obtained.

In view of the above discussion, the petitioner's result of supplementary having been declared before declaration of marks on revaluation and choice rested with the candidate to retain better of the marks obtained in each of the subject.

Declaration of petitioner's result on 27.01.2006 suffered from no error which could be corrected by the respondents. Accordingly it must be held that under the relevant provisions of the Ordinance governing examinations and declaration of results by the University of Bikaner the petitioner appellant had earned right to pursue and appear at 2nd Year LLB Examination. The result of petitioner in respect of LLB Ist Year deserves to be made absolute.

The special appeal is accordingly, allowed. Judgment under appeal is set aside. As a result of aforesaid discussion

the writ petition is allowed and the impugned order dated 11.03.2006 [Annexure 9] is quashed and the petitioner is allowed to retain the result of LLB 2nd Year as declared by the respondents under the directions of the Court dated 21.01.2007 and the petitioner is entitled to all consequential benefits of that being admitted to ensuing 3rd Year Examination in the Year in case he had passed 2nd Year Examination.

No costs.

[CHATRA RAM JAT]J. **[RAJESH BALIA], J.**

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